



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

July 16, 2004

Mr. Alan Ballard
Executive Director
Wichita Foundation for Children's Services, Inc.
811 6th Street, Suite 130
Wichita Falls, Texas 76301

OR2004-5914

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205304.

The Child Advocates of Wichita Falls (the "Child Advocates"), which you state is incorporated as the Wichita Foundation for Children's Services, Inc., received a request for seven categories of information, including statistical reports, reports of alleged child abuse, communications with judges, meetings minutes, newsletters, and names of volunteers. You state that some responsive information has been made available to the requestor. You claim that names and other identifying information of volunteers who serve the Child Advocates are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential.

¹Although you also claim that the requested information may be withheld under section 552.305, this section is not an exception to public disclosure. Rather, this section is a procedural provision permitting an interested third party to submit to the attorney general reasons why requested information should not be released. Gov't Code § 552.305; *see* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Thus, the Child Advocates may not withhold any of the submitted information under section 552.305.

You claim that the identities of the Child Advocates' volunteers are excepted from disclosure pursuant to section 264.610 of the Family Code, which provides that "[t]he attorney general may not disclose information gained through reports, collected case data, or inspections that would identify a person working at or receiving services from a volunteer advocate program." Fam. Code § 264.610. The information at issue is not contained in reports or other materials collected by the attorney general as part of its statutory duties under chapter 264 of the Family Code. Rather, this information was created by Child Advocates for its own purposes. Accordingly, we find that section 264.610 of the Family Code is not applicable to the requested records. *See generally* Open Records Decision Nos. 658 (1998), 478 (1987) (stating that statutory confidentiality must be express and will not be implied from statutory scheme).

You also claim that the identities of the volunteers of Child Advocates are excepted from disclosure under section 552.101 of the Government Code in conjunction with the First Amendment to the United States Constitution. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization's list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). "[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.*

Bay Area Citizens, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that "the burden must be light." *Id.* at 376. Quoting the United State Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* Such proof may include "specific evidence of past or present harassment of

members due to their associational ties, or of harassment directed against the organization itself.” *Id.*

Considering the representations made to this office and the totality of the circumstances, we agree that you have made a *prima facie* showing that disclosure of the identities of contributors to Child Advocates in this instance will burden their First Amendment rights to freedom of association. Furthermore, we find that the term “contributor” encompasses both the identities of those corporations and individuals who make financial donations to Child Advocates, and volunteers who donate their time and services to Child Advocates. *Id.* We note, however, that the term “contributor” does not encompass members of Child Advocates’ governing board. *See generally* Gov’t Code § 552.022(a)(2). Accordingly, you must withhold information that identifies contributors under section 552.101 of the Government Code in conjunction with the First Amendment. We emphasize that this information must be withheld only to the extent reasonable and necessary to protect the identities of the contributors. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 205304

Enc. Submitted documents

c: Mr. Gary W. Gates
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(w/o enclosures)